

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Thursday, July 26, 1984 Rockville, Md.

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, Stella B. Werner Council Office Building, Rockville, Maryland, at 9:47 A.M. on Thursday, July 26, 1984.

PRESENT

Esther P. Gelman, President	Michael L. Gudis, Vice President
Rose Crenca	Neal Potter
Scott Fosler	David L. Scull
William E. Hanna, Jr., President Pro Tem	

The President in the Chair.

Re: Worksession on Charter Amendments,
Petitions and Ballot Questions

The Council reviewed Charter amendments, petitions, and ballot questions in accordance with a memorandum of July 24, 1984 from Myriam Bailey, Office of Legislative Counsel. The Council began its review by considering recommendations of the Charter Review Commission.

Ballot Question A and Proposed Charter Amendment (Approval of the Budget) - This involves an amendment to Section 305 of the Charter which exempts the budgets of certain self-funding programs from the computation of the aggregate operating budget when determining whether an affirmative vote of five Councilmembers is required to approve the budget; provides that the Consumer Price Index shall be computed for the twelve months preceding December first of each year; and makes a clarifying change.

Councilman Potter directed attention to his proposed additional amendment to add the following language after the phrase "For the purposes of this limitation the aggregate operating budget":

shall include all items for which appropriations were
included in the operating budget of the preceding year

Mr. Potter said that his amendment has been discussed with the Office of Management and Budget. The amendment is proposed to ensure that the comparison from one year to the next truly reflects the increase in operating budget expenditures. He said that it might be helpful to add the following clarifying language:

Unless an item has been shifted from the operating budget to the Capital Improvements Program or from the Capital Improvements Program to the operating budget, in which case the item shall be included, for purposes of calculating the percentage increase in the operating budget, in the aggregate budget or the CIP in the way in which it was included in the preceding year.

Mr. Norman Christeller, Chairman of the Montgomery County Planning Board, said that Mr. Potter's amendment attempts to remove the incentive to shift items from the operating budget to the Capital Improvements Program which should not be part of the CIP.

Councilman Hanna moved, duly seconded, deletion of the last sentence of the proposed Charter amendment:

Also excluded from aggregate operating budgets for purposes of this limitation shall be the current receipts or accumulated revenues used to finance a part of the Capital Improvements Program.

Councilman Hanna, in moving to delete this sentence, said that anything that is placed in the budget and funded during the current fiscal year is part of the operating budget and should not be excluded.

Councilman Potter explained the need to compare similar items to understand the rise and decline of expenditures. He said a more accurate measure of real financial growth is needed.

Mr. Hanna said that it makes sense to have a reconciliation of the budget figures from year to year, but he is viewing this from an accountant's viewpoint and believes that standard rules should be followed.

Councilwoman Crenca stressed the need for consistency in whatever method is followed.

Mr. Treworgy said that the Office of Management and Budget supports Mr. Potter's amendment for comparability purposes.

Councilman Fosler expressed the view that the retention of the last sentence requires the clarifying language proposed by Mr. Potter.

Councilman Potter said that his amendment would ensure comparability and prevent the shifting of figures.

Councilman Hanna expressed the view that surplus funds should not be shifted to the capital budget because the budget is prepared on an annual basis and taxes should be levied accordingly. He urged the Council to support his motion to delete the last sentence of the Charter amendment.

Councilman Gudis expressed support for Mr. Potter's amendment, noting its desirability in helping the County maintain its triple A bond rating and its fiscal policy.

Councilman Scull expressed support for the Charter amendment without modification because the amendment has been reviewed and recommended by the Charter Review Commission. Mr. Scull said that he does not believe Mr. Potter's amendment is needed at this time because it introduces a new element about general revenue receipts funding and does not provide any benefit to the taxpayer.

Councilman Fosler noted that Mr. Potter's proposed amendment does not just address the last sentence but rather goes beyond it. He expressed the view that, if the last sentence is included in the proposed Charter amendment, Mr. Potter's sentence is needed. He said that he now agrees with Mr. Hanna that the last sentence of the Charter amendment will create a problem. He suggested that the last sentence be deleted and the clarifying language proposed by Mr. Potter be substituted.

Councilwoman Gelman suggested that a balance sheet be prepared to depict the funding changes which have occurred since the previous fiscal year. Council Staff Director Spengler said that this could be done but the level of detail has to be considered, as well as the definition of "item."

Councilman Potter, agreeing with Ms. Gelman's suggestion, said that the balance sheet would have to show the comparability being used to calculate the percentage increase from one year to the next. This could be accomplished by a footnote or be placed in the budget as it is presented by the County Executive.

Councilman Hanna reiterated his concern about the last sentence of the proposed Charter amendment, expressing the view that it will be misunderstood by the public. He noted that the City of Rockville prepares a reconciliation statement on the order of what is being discussed here. He believes that this is the proper form for setting forth an accurate funding comparison.

Councilman Gudis said that the Finance and Intergovernmental Committee has been attempting to address the problem of which items should be included in the capital budget and which ones in the operating budget. This past week, the FIN Committee discussed the fiscal policy question which is a

related issue. Mr. Gudis explained that he supports the inclusion of the last sentence in the Charter amendment because the Charter will then provide for the exclusion of current receipts or accumulated revenues used to finance part of the Capital Improvements Program from the aggregate operating budgets. He said that he had objected to previous suggestions from the Office of Management and Budget regarding this procedure because the Charter did not contain this provision.

Councilmembers Hanna, Scull, Fosler, Crenca and Gelman voting in the affirmative and Councilmembers Potter and Gudis voting in the negative, the Council deleted the last sentence of the proposed Charter amendment for Section 305.

Councilman Potter said that it is even more important to prepare a table of comparable items from year to year since the Council has deleted the sentence relating to the exclusion of current receipts from the aggregate operating budget which are used for CIP projects.

Councilman Hanna moved that the Council, by policy resolution, require the County Executive to provide each year a reconciliation between the current fiscal year's budget and the projected fiscal year's budget, so that audit statements will be available for the public. There was no second to Mr. Hanna's motion.

Councilman Fosler proposed that the concept suggested by Mr. Hanna be included in the Charter, i.e. the inclusion of a statement that it shall be the responsibility of the County Executive to provide a reconciliation on funding shifts between the capital and operating budgets.

Councilman Gudis expressed the view that the Charter should not be encumbered with intricate management tools.

Councilman Fosler moved, duly seconded, to prepare a Charter amendment which would add a simple sentence calling for a reconciliation statement. He provided the following suggested language for the sentence:

For the purposes of this limitation, a reconciliation table shall be provided in each year's budget showing the changes in the aggregate.

Without objection, the Council agreed to defer action on this motion to provide the opportunity for the preparation of language for the Charter amendment proposed by Mr. Fosler.

The Council then turned its attention to another amendment proposed by Mr. Potter, i.e. "All final budget actions shall be taken by roll-call vote of the Council."

Councilman Scull objected to the inclusion of this provision in the Charter because of the complications that arise when procedures such as this are included in a document as formal as the Charter. He noted that a roll call vote is called for in the State Constitution and is a cumbersome, time-consuming procedure. He said that he would be glad to work with Mr. Potter on an amendment to the Council's Rules of Procedures that would address this issue.

Councilman Potter noted that he believes a roll-call vote should be taken on all final budget actions in the same way that roll-call votes are taken on final actions on zoning issues and legislation. He suggested that the language could be amended to say that all final budget actions before May 15 shall be taken by roll-call vote of the Council.

Councilman Hanna said that he would not object to the amendment if it were construed to mean final budget actions. He suggested that the language be amended to say that action on the final annual budget shall be taken by roll-call vote of the Council.

Councilman Gudis said that he feels strongly about the Charter being the constitution of the County; it should not become a set of procedures. He said that he believes that the Council's Rules of Procedures should be amended to require a roll-call vote on final budget actions or that legislation to this effect should be enacted.

Councilman Fosler said that he believes the language should be included in the Charter and suggested that Mr. Potter's proposed language could be amended to say that action on all final budget resolutions shall be taken by roll-call vote of the Council.

Mr. Spengler suggested that the Charter could be amended to say the Council shall by roll-call vote approve the budgets as amended.

President Gelman expressed the view that the setting of the tax rate should also be done by roll-call vote.

Without objection, the Council agreed to defer consideration of this issue to provide the opportunity for review and recommendation by a Council subcommittee composed of Councilmembers Scull and Potter.

Mr. Spengler directed attention to the Charter Review Commission's proposed Charter language for Section 305, noting that the word "fully" between "for" and "self-supporting" in the proposed language is used to describe enterprise funds which are not necessarily fully self-supporting.

Councilman Gudis moved, duly seconded, to delete the word [fully] between "for" and "self-supporting" in the Charter amendment.

Councilman Hanna suggested that the word "self-supporting" be deleted also. Mr. Gudis accepted Mr. Hanna's suggestion as an amendment to his motion.

Mr. Spengler said that accountants use the term "primarily" self-supporting. If it meets that test, it is considered an enterprise fund.

Councilman Potter moved, duly seconded, an amendment to Mr. Gudis' motion to substitute the word "primarily" for "fully."

Councilman Hanna said that, if the word "primarily" is used, it will have to be defined. In his opinion, it is simpler to say "enterprise funds" without any adjectives.

Councilmembers Potter and Fosler voting in the affirmative and Councilmembers Hanna, Gudis, Scull, Crenca and Gelman voting in the negative, the amendment to Mr. Gudis' motion failed for lack of a majority vote.

Without objection, the Council approved Mr. Gudis' motion, as amended, to delete the words [fully self-supporting].

Upon motion of Councilman Gudis, duly seconded and without objection, the Council agreed to delete [the Parking Lot districts] from the proposed Charter amendment for Section 305 of the Charter.

Ballot Question B and Proposed Charter Amendment (Collective Bargaining - County Employees - This involves an amendment to Section 401 of the Charter and the addition of a new Section 511 authorizing the Council to provide by law for collective bargaining.

President Gelman asked about the distinction between "mediation" and "arbitration." Mr. Newman said that mediation is a resolution of differences by an informal procedure, while arbitration is a resolution of differences by a formal procedure involving the issuance of a decision by an arbitrator. The question of whether the decision is binding or not depends upon the agreements reached by the parties involved. Councilman Fosler noted that "binding arbitration" is another term to be considered.

Councilman Hanna moved, duly seconded, to delete from the proposed Charter amendment for Section 511 the words [arbitration or other impasse resolution procedures] and to substitute mediation or non-binding arbitration.

Ms. Elizabeth Spencer, a member of the Charter Review Commission, said that the Charter Review Commission felt that the language in the Charter should be as broadly permissive as possible because the legislation enacted by the Council may be different for different groups.

President Gelman expressed the view that the language in the Charter amendment should be broad because it empowers the Council to enact legislation.

Councilman Hanna said that he prefers to restrict the law that may be enacted to provide for only non-binding arbitration.

Councilman Potter suggested that Mr. Hanna would only need to add the word "non-binding" before the word "arbitration" to accomplish his objective. Mr. Hanna accepted Mr. Potter's suggestion as an amendment to his motion.

Ms. Spencer pointed out that this will create a conflict with Section 510 of the Charter which provides for binding arbitration with an authorized representative of the Montgomery County police officers.

Mr. Geno Renne, President of the Montgomery County Government Employees' Organization (MCGEO), cited the need for equity among County employees. He said that, regardless of whether it is included in the Charter, the Council has the ultimate responsibility of deciding whether it will accept binding arbitration. He said that both of the groups represented by MCGEO are currently under "meet and confer", and that it was hoped that the Charter amendment would provide one system of arbitration for all employees. He said that binding arbitration is preferred because without it there will be inconsistency and uncertainty about how an impasse will be resolved.

Councilman Potter said that he believes binding arbitration would remove from the Council its authority to make the final decision. Noting that he believes that it might be appropriate in situations where strikes are prohibited, Mr. Potter raised objections to the language proposed for Section 511 that says that "any law so enacted shall prohibit strikes or work stoppages." He believes that the Charter amendment should provide some flexibility and balance. He noted that Section 510 prohibits strikes, but provides for binding arbitration.

Councilman Hanna said that he objects to relinquishing of the Council's responsibility to an arbitrator and believes that it could have negative results. He cited a case where employees negotiated an agreement under binding arbitration which called for salary increases which could not be met without a tax increase. He said that the court ruling in this case was that the only individuals who have the overall responsibility of the government are the elected officials; an arbitrator cannot remove those powers and demand something that is against the public interest. He said that he is in favor of collective bargaining for employees if this is what the employees wish.

Councilmembers Hanna and Scull voting in the affirmative and Councilmembers Gudis, Potter, Crenca, Fosler and Gelman voting in the negative, Mr. Hanna's motion to add non-binding before the word "arbitration" failed for lack of a majority vote.

With respect to the language which indicates that the authority for collective bargaining may be granted to authorized representatives of officers and employees of the County government not covered by Section 510, Mr. Renne pointed out that MCGEO cannot represent non-merit employees. He believes that the Council can address this issue through the legislation it enacts in this regard.

Councilman Potter moved to substitute the word may for "shall" before the word "prohibit" in the language proposed for Section 511. The motion failed for lack of a second. In making the motion, Mr. Potter said that he believes that the issue of prohibiting or permitting strikes could be addressed in legislation the Council enacts.

Mr. Renne requested that the record reflect MCGEO's opposition to the lack of flexibility in the Charter amendment for County employees.

Councilman Potter moved to delete the word {only} between "system" and "to" in the language proposed for Section 401. Following discussion, without objection, the Council agreed to amend this language by including a comma before the word "only", as suggested by Ms. Spencer.

Councilman Hanna raised a question about the language proposed for Section 401 that says that "officers and employees who are members of a unit for which a collective bargaining contract exists may be excluded from the provisions of the merit system." He expressed the view that employees should

not have this choice. It was noted that collective bargaining may address only one of several benefits that County employees have under the merit system.

Councilman Hanna took issue with the word "authorize" in the second sentence of Ballot Question B. Following discussion, he requested the record to reflect that it is the Council's understanding that the authorization given to the County Council to provide by law for collective bargaining is enabling only.

Without objection, the Council approved Ballot Question B and the charter language proposed for Sections 401 and 511, as amended to include a comma before the word "only" in the language proposed for Section 401.

Ballot Question C and Proposed Charter Amendment (Council Legal Representative) - This involves the addition of Section 119 and an amendment to Section 213 of the Charter concerning the employment of separate legal counsel by the County Council.

The Council turned its attention to the County Attorney's suggested language for Ballot Question C.:

Add Section 119 to the County Charter and amend Section 213 of the County Charter to authorize the County Council to employ or retain legal counsel to assist it in the exercise of its powers, without the consent of the County Attorney.

Councilman Gudis moved, duly seconded, to approve the language suggested by the County Attorney.

Councilman Scull expressed opposition to the suggested language, noting that the proposed amendments to the Charter clarify the existing practice, and the language should not be revised to make it sound as if a change is being made.

Councilman Fosler said that he believes the language suggested by the County Attorney is a clear and accurate statement of what the amendment would do. It does not say whether it is a change from what presently exists, but rather what the amendment will accomplish. He said that he is concerned with the language proposed by the Charter Review Commission for Ballot Question C because it seems to imply that there is no change when the amendment would change the existing practice of the County Council in obtaining the consent of the County Attorney for separate legal assistance.

Councilman Potter said that in the early seventies the language of the Charter was interpreted to mean that the County Attorney was the principal legal advisor for the County Council and that the Council could not hire an attorney independently. The Council succeeded in changing this through practice, receiving automatic consent to hire outside legal counsel for particular representations. Although he believes the proposed amendments are desirable, they connote a change from the present practice and should be so stated in the ballot question. Therefore, he prefers the language suggested by the County Attorney.

Councilman Hanna said that he believes a compromise between the two versions of Ballot Question C would be appropriate, suggesting that the language proposed by the Charter Review Commission be amended to include after the word "explicit" the words to clarify.

Councilman Scull said that he supports Mr. Hanna's suggestion. He is opposed to the language suggested by the County Attorney because it might be misinterpreted by the voters.

Councilwoman Crenca expressed the view that the Council had always had the understanding that it had to obtain permission from the County Attorney for separate legal counsel. She believes this has always been done, and that the Council's requests have never been denied. If it is true that the Council has always had this authority, there is no reason to include this question on the ballot.

Without objection, the Council agreed to defer further consideration of this issue until its meeting on Tuesday, July 31, 1984.

Ballot Question D and Proposed Charter Amendment (HOC Bonds Exception) - This involves an amendment to Section 312 to provide that housing revenue bonds issued by the Housing Opportunities Commission may be structured with substantially level debt service payments and payments of interest only during construction of projects financed with bonds and that a portion of the bonds issued may be sold as term bonds structured with mandatory sinking fund payments.

Councilman Potter suggested that the language in the question and the amendment be changed to substitute payments of interest only for the words [interest only payments]. Without objection, the Council approved this change.

Upon motion of Councilman Scull, duly seconded and without objection, the Council approved Ballot Question D and the amendment to Section 312, as amended.

Ballot Question E and Proposed Charter Amendment (Composition and Election of Councilmembers) - This involves an amendment to Section 102 of the Charter which has been petitioned to referendum, providing that five members of the Council shall be elected by voters of the Councilmanic district in which the member resides and that two members will be elected as members-at-large by voters of the entire County.

Councilman Fosler requested that the ballot question be given to a member of the Coalition for Representative Government for review to make certain it is an accurate interpretation of the proposed amendment.

Upon motion of Councilwoman Crenca, duly seconded and without objection, the Council approved Ballot Question E and the proposed amendment to Section 102.

With respect to Ballot Questions F, G and H and accompanying amendments, as more particularly set forth in Ms. Bailey's memorandum of July 24, 1984, Ms. Bailey said that these would be before the Council later if they are certified by the Supervisors of Elections.

(The meeting recessed at 12:26 and reconvened in the Third Floor Conference Room at 12:40 P.M.)

Re: Discussion of Renovation Plans for
Third Floor Hearing and Conference
Rooms

The Council met with Council Staff Director Spengler; Mr. Larry White, Office of Architectural Services, Department of Facilities and Services; Mr. Tom Kamstra, Mr. Mike Miller, and Ms. Edie Alguadich, of the architectural firm of Kamstra, Dickerson and Associates (KDA), to discuss KDA's preliminary plans for the renovation of the Council's third floor